

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Caleb L. McGillvary)	
PLAINTIFF)	CIVIL ACTION NO.
)	2:23-cv-01195-JLS-SK
V.)	Hon. Josephine L. Staton, USDJ
)	Hon. Steve Kim, USMJ
Netflix et al)	Motion Date: To be determined
DEFENDANT)	by the Court
)	

DECLARATION IN SUPPORT OF OPPOSITION TO DEFENDANT JEFF STRICKER'S
MOTION TO DISMISS UNDER RULE 12(b)

I, Caleb L. McGillvary ("Plaintiff"), hereby declare pursuant to 28 U.S.C. 1746 the following:

1.) I am the pro se plaintiff in the above-captioned matter.

2.) On November 2, 2023, I sent the Clerk a fully executed, signed and sealed summons for Jeff Stricker and each other Defendant; as well as 18 copies of the First Amended Complaint and Appendix in this action; via the institutional mailing system here at NJ State Prison. The mailing receipts evidencing this were witnessed by me and a correctional officer, and are attached hereto as Exhibit A.

3.) On the information provided by the U.S. Marshal in ECF 82, I believe that two U.S. Marshal's deputies served the summons filed as ECF 43, and a copy of the First Amended

Complaint and Appendix filed as ECF 18, as described in "2" above: on Jeff Stricker at his address listed in the First Amended Complaint on or about December 28, 2023.

4.) On information of the appearance of the Exhibits proffered as part of Jeff Stricker's declaration in support of his motion to dismiss, I believe that he has printed an unsigned and unsealed summons from PACER and offered it in an attempt to commit fraud on the Court.

5.) I believe that, if I called Jeff Stricker to testify at a hearing for this motion, I could impeach his credibility through cross-examination and show that his declaration is false and lacking in basis to support his motion.

6.) I believe that, if permitted discovery, I could subpoena and discover returns of process from the U.S. Marshal Service for each of the two deputies; which will show that the U.S. Marshal's deputies have a habit and/or usual business practice of delivering the correct process to the individual to be served. I believe that the returns of service of the deputies in question can be properly authenticated by each deputy, if such deputies are called to testify at a hearing on this motion, and that their testimony will be credible and persuasive in contradicting Stricker's self-serving declaration.

7.) I am incarcerated at NJ State Prison, and in order to attend this hearing by video conference, I will need the Court to issue an order to that effect to the administrator of NJ State prison. I have personal knowledge that there is video conference facilities at this prison, which I have seen

with my own eyes here at 3rd & Federal Streets Trenton, NJ 08625-0861 on February 21, 2024 at or around 8:10am EST on my walk from the West to the North Compound. On such information, I believe that an order served upon the Administrator of NJ State prison will allow me to utilize those facilities to appear at the hearing for this motion.

8.) For all the foregoing reasons, I believe in good faith that the Court should deny Defendant's motion, and that I should be permitted to cross-examine Stricker concerning his declaration at a hearing for this motion via videoconference; and that if this motion is converted to a Rule 56 motion under Rule 12(d), that the foregoing constitutes good cause for discovery and a hearing under Rule 56(d)(2).

I declare under penalty of perjury that all documents attached hereto are true and accurate copies of the originals.

I declare under penalty of perjury that the foregoing statements are true and accurate.

Executed this 29 day of FEBRUARY, 2024

Date: 2/29/24

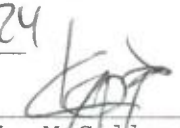

Caleb L. McGillvary, ProSe
#1222665/SBI#102317GNJSP
PO Box 861, Trenton, NJ08625

EXHIBIT A

New Jersey Department of Corrections CUS-126

BUSINESS REMIT

(Use for all inmate disbursements except institutional store orders)

Date: 11/02/23To: NJSP Business Manager

Please pay from my funds on deposit:

\$ 3.80 dollars

Payable to: (full first and last name)

NJSP

Relationship:

Full Address: (no P.O. Boxes)

18-165 Conc. Grid Zone 8 #18.66**FOR THE FOLLOWING PURPOSE:**PACHING MATERIALS FOR
OUTGOING PACKAGE1208042E0310105536Inmate's name: CALEB M GILLVARYInmate's SBI: 1025176Location: (wing and cell/bed) GR 81 CELLWitness: (print) C. Coen(sign) C. Coen

Supervisor: (print)

(sign)

Approved:

Paid on date:

Check number:

CO-30 A

NEW JERSEY STATE PRISON

Rev. 3/1/21

POSTAGE REMIT

DATE: 10/02/23 LOCATION: 6R81SBI NUMBER: 1023176INMATE NAME: CALEB MCGILLVARYINMATE SIGNATURE: [Signature]

TO: BUSINESS MANAGER DATE MAILED: _____

(✓) Check Appropriate Box (s)

<input type="checkbox"/>	Legal Postage <u>Com. 6th Zone 8</u>	\$
<input type="checkbox"/>	Certified Cert. #	
<input type="checkbox"/>	Return Receipt Requested	
<input type="checkbox"/>	Postage Affixed; SEND DIRECT TO MAILROOM	
<input checked="" type="checkbox"/>	Regular Postage or <u>UPS</u> Property	<u>18.66</u>
<input type="checkbox"/>	Additional Insurance Amount \$	
<input type="checkbox"/>	No Postage Inter Office Mail	

Weight of Mail/Property 18-155 Total Postage and Fees \$SENT TO: CLERK, USDC - CDCAADDRESS: PRINT 255 E. TEMPLE ST RM 180
LOS ANGELES, CA 90012WITNESS: C. Coen APPROVED BY:
PRINT
SIGNATURE: C. Coen

CHECK#

DATE:

CO-24

OUT GOING PACKAGE INVOICE

Rev. 3/16/00

INMATE NAME CALEB MCGILLVARY S.B.I. # 1023176
 HOUSING UNIT GR81 DATE 10/02/23

CONTENTS OF PACKAGE

Appliances to include model and serial number

COVER LTR (1), SUMMONS (18), FACT MP (18)
USM-285 (18)
MCGILLVARY V. NETFLIX ET AL
USDC - CDCA DKT NO. 2:23-CV-01195-JLS-SK
18-165 Com. Grad Zone 8 \$18.66
1Z 080 42E 03 1010 553 6

PACKAGE HANDLING

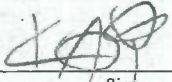
SELECT ONE ONLY

☒ MAIL ☐ VISIT PICK-UP ☐ DONATION ☐ DESTROY

VISITOR NAME OR ADDRESS FOR MAIL OUT

CLERK, USDC - CDCA
255 E. TEMPLE ST. RM 180
LOS ANGELES, CA 90012

INMATE:

 CALEB MCGILLVARY
 Sign Print

HOUSING OFFICER:

 Sign Print

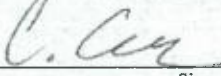
MAIL ROOM OPERATOR:

 Sign Print

PROPERTY OFFICER: ☒

(Please check one box)

VISITOR: ☐

 C. Coen
 Sign Print

DATE OF DISPOSITION: 11-3-23 out 11/6/23

• Golden Rod = Inmate copy • Pink = Housing Officer copy • Yellow = Mailroom Sgt. • White = Property/N.C. Mailroom file •

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FEBRUARY 29, 2024

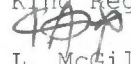
Clerk, US Dist. Ct. - CDCA
US Courthouse
255 E. Temple St., Rm 180
Los Angeles, CA 90012

RE: McGillvary v. Netflix et al
Civil Action No. 2:23-cv-01195-JLS-SK
Hon. Josephine L. Staton, U.S.D.J.
Hon. Steve Kim, U.S.M.J.

Dear Clerk;

Please find enclosed and file onto the docket my brief in opposition to Defendant Jeff Stricker's motion to dismiss under Rule 12(b), and my notice, proposed order, and declaration in support of my request to cross-examine Jeff Stricker at the hearing on his motion pursuant to L.R. 7-8; and proof of service thereof; in the above-captioned matter.

Kind Regards,


Caleb L. McGillvary
In Propria Persona

ENCL:
CC: FILE

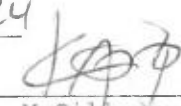
PROOF OF SERVICE

I, Caleb L. McGillvary, declare pursuant to 28 U.S.C. 1746 that on today's date, I placed in the institutional mailing system here where I'm incarcerated at NJ State Prison 3rd & Federal Streets Trenton, NJ 08625; with First Class Postage prepaid to be sent via USPS Mail; the original of my brief in opposition to Defendant Jeff Stricker's motion to dismiss under Rule 12(b), and my notice, proposed order, and declaration in support of my request to cross-examine Jeff Stricker at the hearing on his motion pursuant to L.R. 7-8; to the Clerk of the Court at USDC-CDCA 255 E. Temple St. Rm 180 Los Angeles, CA 90012; and, pursuant to this Court's 1/25/24 Order, ECF 94, and L.R. 5-3.2, have relied upon the Clerk to send by notice of electronic filing a copy of each said document to Counsel for Defendants Scott C. Hawkins at 2220 Tulare St., 5th Floor Fresno, CA 93721, Matthew S.L. Cate at 1909 K St. NW, 12th Floor Washington, DC 20006-1157, Howard M. Rupp at 615 N. Paulina Ave Redondo Beach, CA 90277, and Cydney Swofford Freeman at 865 S. Figueroa St., 24th Floor Los Angeles, CA 90017-2566. I further declare that no other Defendants have yet appeared in this matter, to my knowledge.

I hereby invoke the prison mailbox rule.

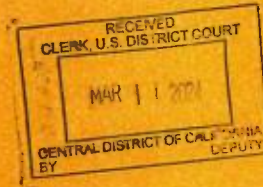
I declare under penalty of perjury that the foregoing statements made by me are true and accurate.

Executed this 29 Day of FEBRUARY, 2024



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CLERK
U.S. DIST. CT. - C.D. CA
OFFICE OF THE CLERK
255 E. TEMPLE ST. RM 180
LOS ANGELES, CA
90012

